

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

TERESSA HARGIS)	
Claimant)	
VS.)	
)	
GREAT PLAINS NURSING AND REHABILITATION CENTER)	
Respondent)	
AND)	
)	
CONTINENTAL CASUALTY COMPANY)	
Insurance Carrier)	

Docket No. 248,916

ORDER

Claimant appealed the February 4, 2000 preliminary hearing Order entered by Administrative Law Judge Jon L. Frobish.

ISSUES

Claimant alleges that she developed a hernia while working for the respondent on August 27, 1999. The Judge found that claimant failed to give the respondent notice of the accident within the first 10 days following the incident and, therefore, denied the request for benefits.

Claimant contends Judge Frobish erred. Claimant argues that on August 28, 1999, she notified respondent's director of nursing, Angie Bidleman, that she had injured herself at work.

The only issue before the Board on this appeal is whether claimant provided the respondent with timely notice of accident.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Claimant worked for the respondent, a nursing and rehabilitation center, as a certified nurse's aide. Claimant alleges that she developed a hernia while lifting a resident on August 27, 1999. Claimant also alleges that the next day she told the director of nursing, Angie Bidleman, about the accident and received the authority for surgery. As there is evidence that contradicts claimant's testimony, the outcome of this claim hinges upon claimant's credibility.

2. Ms. Bidleman no longer works for the respondent and did not appear at the preliminary hearing. But the respondent presented Ms. Bidleman's affidavit. The affidavit states that (1) Ms. Bidleman knew claimant had a hernia before August 27, 1999, and (2) claimant never advised her that she had a work-related accident on or about August 27, 1999. Rosemary Stannifer, respondent's administrator, testified at the preliminary hearing that Ms. Bidleman never advised her that claimant was alleging a work-related accident. Ms. Stannifer further testified that Ms. Bidleman was not authorized to approve surgery as claimant has suggested.

3. Judge Frobish observed claimant and Ms. Stannifer testify. After considering all of the evidence, the Judge found claimant's testimony was not persuasive. In this instance, the Appeals Board gives some deference to the Judge's impression of claimant's credibility and affirms the finding that claimant failed to prove that she provided the respondent notice of the accident within 10 days of the incident.

CONCLUSIONS OF LAW

1. The preliminary hearing Order should be affirmed.

2. The Workers Compensation Act places the burden of proof on injured workers to establish their right to compensation.¹ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that their position on an issue is more probably true than not when considering the whole record.²

3. The Workers Compensation Act requires a worker to provide the employer timely notice of a work-related accident or injury. The Act reads:

Except as otherwise provided in this section, proceedings for compensation under the workers compensation act shall not be maintainable unless notice of the accident, stating the time and place and particulars thereof, and the name and address of the person injured, is given to the employer within 10 days after the date of the accident, except that actual knowledge of the

¹ K.S.A. 1999 Supp. 44-501(a).

² K.S.A. 1999 Supp. 44-508(g).

accident by the employer or the employer's duly authorized agent shall render the giving of such notice unnecessary. The ten-day notice provided in this section shall not bar any proceeding for compensation under the workers compensation act if the claimant shows that a failure to notify under this section was due to just cause, except that in no event shall such a proceeding for compensation be maintained unless the notice required by this section is given to the employer within 75 days after the date of the accident unless (a) actual knowledge of the accident by the employer or the employer's duly authorized agent renders the giving of such notice unnecessary as provided in this section, (b) the employer was unavailable to receive such notice as provided in this section, or (c) the employee was physically unable to give such notice.³

Claimant does not argue that she had just cause that excused the failure to notify the respondent of the accidental injury within the first 10 days of the alleged incident.

4. Claimant has failed to prove that she provided the respondent with timely notice of the alleged accidental injury. Therefore, the request for benefits should be denied.

5. As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim.⁴

WHEREFORE, the Appeals Board affirms the February 4, 2000 preliminary hearing Order entered by Judge Jon L. Frobish.

IT IS SO ORDERED.

Dated this ____ day of March 2000.

BOARD MEMBER

c: William L. Phalen, Pittsburg, KS
Michael H. Stang, Overland Park, KS
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Director

³ K.S.A. 44-520.

⁴ K.S.A. 1999 Supp. 44-534a(a)(2).